IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PEITION NO.1367 OF 2006

Suhas P. Warekar. ...Petitioner.
Versus
Deputy Engineer, Co-op Cell, MBRRB & Ors. ...Respondents.

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Mr. P.G. Karande for the Petitioner.
Ms.Geeta Shastri, AGP for Respondent Nos.1 to 4.

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CORAM : DR. D.Y. CHANDRACHUD, J.

January 23, 2007.

P.C.:

The dispute before the Court relates to an application submitted on behalf of the tenants of a property known as Bandukwala Chawl for the formation of a Co-operative Society under Chapter VIIIA and Section 103B of the Maharashtra Housing and Area Development Act, 1976, for the better preservation of the chawl. From the affidavit in reply of the Deputy Engineer dated 14th June 2006, it emerges that the chawl is an 'A' category cessed structure comprising of a ground floor and two upper floors with 11 tenements. According to the Petitioner, the landlord had not carried out repairs and at the instance of the tenants, MHADA had

undertaken repairs in 1982-83 and 1996-97. On the application filed on 1st August 2003 by 9 out of 11 tenants, the Deputy Engineer of the Co-operative Cell, addressed a letter to the landlord, the Fifth Respondent, after the submission of the proposal.

On 15th May 2004, the Deputy Engineer in the Co-operative Cell of the Mumbai Building Repairs and Reconstruction Board addressed a letter to the Chief Promoter, the Petitioner herein, stating that the Executive Engineer in the E-Ward was called upon to furnish details regarding the structural condition of the building. The letter stated that the concerned Deputy Engineer inspected the building and his opinion was that the building is in a safe condition. Hence, it was stated that the Executive Engineer, E-Ward had not considered it appropriate to take up the building for the work of structural repairs. On 23rd August 2004, the Deputy Engineer in the Co-operative Cell, requested the Executive Engineer to examine the proposal and to re-examine the condition of the building in regard to the need for structural repairs. On an

application filed by the Petitioner for information under the Maharashtra Right to Information Act, 2002, the Deputy Chief Engineer (North) of the Mumbai Building Repairs & Reconstruction Board furnished several documents which included a report of the Architect of the Board. The report of the Architect, in fact, stated that the building is in a dilapidated condition and is in need of urgent repairs.

A serious grievance has been made before the Court in regard to the manner in which the application filed by the Petitioner was sought to be disposed of and it has been urged that the report submitted by the Architect appointed by the Board itself would abundantly make it clear that there is an urgent need for repairs.

Two affidavits have been filed before this Court. In the affidavit filed by the Deputy Engineer of the Co-operative Cell, it has been stated that an Architect was appointed by the Executive Engineer, E-Division to inspect the building. The Architect submitted his report dated 5th February 2005 which was received

by the Executive Engineer's office on 10th March 2005. However, the First Respondent states that the copy of the Architect's report was not forwarded by the Executive Engineer of E-Ward nor was any reply sent by the Executive Engineer to the letter dated 23rd August 2004 of the First Respondent. In a subsequent affidavit filed in these proceedings by the Deputy Engineer of the Repairs and Reconstruction Board, it has been stated that the building was inspected by him on 4th November 2004. The deponent states that he submitted a proposal in the printed format for the signature of the Executive Engineer which was personally filled in by him in respect of the technical aspects of the building, while the rest of the proposal was filled in by a clerk. There is, prima facie, merit in the submission that has been urged on behalf of the Petitioner that despite the report of the Architect appointed by the Board to the effect that the building was in a dilapidated condition, none of the authorities proceeded to impart to the matter a consideration with a degree of seriousness that was to be expected. The first affidavit filed on behalf of the Deputy Engineer in the Co-operative Cell in fact, sets out a submission that in the list of 103 “most dangerous

and dilapidated buildings" in the Island City of Mumbai which was published after carrying out a Pre-monsoon Survey in 2006, the building in question was not reflected as a part of the list. Even if the building was not reflected as one of the 103 "most dangerous dilapidated buildings", that would not prevent the authorities from taking cognizance of the report of the Architect appointed by the Board itself.

In these circumstances, an order of remand would be necessitated with a direction to the authorities to consider the proposal submitted by the Petitioner in accordance with law. At the hearing of the Petition, the Learned AGP has submitted before the Court that some of the tenants who had originally supported the proposal had in fact, withdrawn therefrom. The circumstances in which some of the original signatories have later withdrawn from the proposal have been seriously disputed on behalf of the Petitioner. It is not necessary for this Court to enquire into these disputed questions since it would suffice to observe that the Board in considering the proposal shall have regard to all the necessary

requirements under the law, including the number of tenants who are required to support such a proposal.

In the circumstances, the petition is disposed of by directing the First, Second and Third Respondents to scrutinise the proposal submitted on behalf of the Petitioner on 15th October 2003 in accordance with law. The decision shall be taken after hearing the concerned parties within a period of four months from today.

The Learned AGP submitted that since the constitutional validity of Chapter VIIIA is pending before the Supreme Court, the Respondent-authorities shall after scrutiny arrive at a tentative decision in accordance with the interim orders passed by the Supreme Court.

The petition is accordingly disposed of. There shall be no order as to costs.

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